

Senate Bill No. 2203

CHAPTER 733

An act to amend Sections 100825, 100830, 100831, 100832, 100837, 100852, 100860, 100862, 100870, and 100872 of, and to add Section 100860.1 to, the Health and Safety Code, relating to environmental laboratories.

[Approved by Governor September 25, 2000. Filed
with Secretary of State September 27, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2203, Committee on Environmental Quality. Environmental laboratories.

(1) Existing law requires laboratories that perform analyses for pesticide residues in food to obtain certification by the State Department of Health Services and permits these laboratories to also apply for accreditation under the National Environmental Laboratory Accreditation Program (NELAP) if it chooses to meet standards adopted by the National Environmental Laboratory Accreditation Conference (NELAC) and become eligible for recognition by other states and agencies that require or accept NELAP accreditation.

This bill would permit these laboratories to apply for NELAP accreditation in lieu of certification in certain circumstances.

(2) Existing law requires the department to adopt regulations governing the application criteria for acceptance and approval of approved 3rd-party laboratory accrediting organizations (ATPLAOs) in accordance with specified criteria.

This bill would delete this requirement and instead would authorize the department to contract with ATPLAOs in accordance with the criteria developed by NELAC or other federal agencies .

(3) Existing law requires a laboratory to pay a specified certification fee to the department at the time of application and annually thereafter.

This bill would revise this fee schedule.

(4) Existing law requires laboratories certified or applying for certification in certain fields of testing relating to pesticides in food to pay to the department a fee of \$400 for the preparation and handling of each proficiency testing sample set.

This bill would instead require laboratories, commencing January 1, 2002, to pay a fee directly to the designated proficiency testing provider for the costs of each proficiency testing sample set and the proficiency testing study.

The people of the State of California do enact as follows:

SECTION 1. Section 100825 of the Health and Safety Code is amended to read:

100825. (a) Laboratories that perform, for regulatory purposes, analyses of drinking water, wastewater, air, hazardous wastes, and contaminated soils or sediments, or any combination of these, shall obtain a certificate pursuant to this article. Laboratories that perform analyses for pesticide residues in food pursuant to Section 110490 shall obtain a certificate pursuant to this article. A laboratory may apply for NELAP accreditation in lieu of certification under this article if it chooses to meet NELAC standards for those fields of testing under Section 100862 that are in common with the two programs. Laboratories meeting the requirements of NELAP accreditation pursuant to this article shall become eligible for recognition by other states and agencies that require or accept NELAP accreditation.

(b) In any arrangement between laboratories that involves the transfer of samples or portions of samples, the analyzing laboratory shall be identified in all sample reports and shall be the laboratory for purposes of certification or NELAP accreditation.

(c) For the purposes of this article:

(1) "Accreditation" means the recognition of a laboratory that is approved by a NELAP approved accrediting authority to conduct environmental analyses in those fields of testing specifically designated in Section 100862.

(2) "Approved third-party laboratory accreditation organization" or "ATPLAO" means an organization which has been approved as a contractor under NELAC standards to assess environmental laboratories.

(3) "Certificate" means a document issued to a laboratory that has received certification or accreditation pursuant to this article.

(4) "Certification" means the granting of approval by the department to a laboratory that has met the standards and requirements of this chapter and the regulations adopted thereunder. Certification shall not include NELAP accreditation.

(5) "Corrective action report" means a written document signed by or on behalf of a person, entity, or laboratory which states the corrective actions proposed by the person, entity, or laboratory to correct the deficiencies or violations stated in a report of deficiencies.

(6) "Deficiency" means noncompliance with one or more of the requirements of this article or any rule or regulation adopted thereunder.

(7) "ELAP" means the State Department of Health Services' Environmental Laboratory Accreditation Program.

(8) "Laboratory" means any facility or vehicle that is owned by a person or persons, or by a public or private entity, and that is

equipped and operated to carry out analyses in any of the fields of testing listed in Section 100860 or Section 100862.

(9) “NELAC” means the National Environmental Laboratory Accreditation Conference.

(10) “NELAC standards” refer to the standards found in EPA publication number 600/R-98/151, November 1998, and any subsequent amendments.

(11) “NELAP” means the National Environmental Laboratory Accreditation Program established by NELAC.

(12) “NELAP accredited laboratory” means a laboratory which has met the standards of NELAP and has been accredited by a primary or secondary NELAP recognized authority.

(13) “NELAP approved accrediting authority” means a state agency which is authorized by NELAC to accredit laboratories.

(14) “NELAP recognized primary accrediting authority” means a state agency which is responsible for the accreditation of environmental laboratories within that state.

(15) “NELAP recognized secondary accrediting authority” means a state agency which is authorized by NELAP to accredit environmental laboratories, within that state, which have been accredited by a NELAP approved accrediting authority in another state.

(16) “Performance based measurement system” or “PBMS” means methods which are alternate analytical methods of demonstrated adequacy of equivalence, as determined by the department, other state agencies, or the United States government.

(17) “Pesticide” means any substance that alone, in chemical combination, or in any formulation with one or more substances, is an “economic poison” within the meaning of Section 12753 of the Food and Agricultural Code or a “pesticide” as defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

(18) “Regulatory agency” means any federal, state, or local governmental agency that utilizes environmental analyses performed by a laboratory regulated under this section.

(19) “Regulatory purposes” means the use of laboratory analysis required by a regulatory governmental agency for determining compliance with this section or Chapter 1 (commencing with Section 116275), Chapter 2 (commencing with Section 116300), and Chapter 3 (commencing with Section 116350) of Part 11 of Division 104, Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, and Chapter 6.8 (commencing with Section 25300) of, Division 20, or Division 7 (commencing with Section 13000) of the Water Code, or the regulations adopted under any of the provisions set forth in this paragraph.

SEC. 2. Section 100830 of the Health and Safety Code is amended to read:

100830. The department shall adopt regulations governing the administration and enforcement of this article. Regulations adopted by the department under this article shall specify conditions for recognizing on the basis of reciprocity the certification or NELAP accreditation of laboratories located outside of the State of California for activities regulated under this article by another state or by an agency of the United States government. Certification by another jurisdiction may be recognized for purposes of this article with regard to one or several program activities, including, but not limited to, onsite inspections, the analysis of proficiency testing samples, or the evaluation of personnel qualifications.

SEC. 3. Section 100831 of the Health and Safety Code is amended to read:

100831. NELAP accreditation by another jurisdiction shall be recognized, for purposes of this article, for the granting of accreditation by reciprocity.

SEC. 4. Section 100832 of the Health and Safety Code is amended to read:

100832. The department shall adopt or amend the regulations relating to environmental laboratories as necessary to enable California environmental laboratories to participate in the National Environmental Laboratory Accreditation Program.

SEC. 5. Section 100837 of the Health and Safety Code is amended to read:

100837. The department may contract with approved third-party laboratory accreditation organizations in accordance with the criteria developed by the National Environmental Laboratory Accreditation Conference or other federal agencies.

SEC. 6. Section 100852 of the Health and Safety Code is amended to read:

100852. (a) Notwithstanding any other provision of law, the department may issue a certificate to the owner of a laboratory in a field of testing or method adopted by the federal Environmental Protection Agency pursuant to Part 136 of Title 40 of the Code of Federal Regulations, as amended September 11, 1992, as published in the Federal Register (57 FR 41830), or Part 141 of Title 40 of the Code of Federal Regulations, as amended July 17, 1992, as published in the Federal Register (57 FR 31776), and as subsequently amended and published in the Federal Register.

(b) As a NELAP approved accrediting authority, the department shall accept performance based measurement system methods, when mandated methods are indicated. A fee, as specified in regulations adopted by the department, may be charged for the review of each performance based measurement system method.

(c) Notwithstanding any other provision of law, the department shall not be required to meet the requirements of Chapter 3.5



(commencing with Section 11340) of the Government Code in order to issue a certificate pursuant to subdivision (a).

SEC. 7. Section 100860 of the Health and Safety Code is amended to read:

100860. (a) At the time of application and annually thereafter, from the date of the issuance of the certificate, a laboratory shall pay an annual certification fee. The fee shall consist of a basic nonrefundable fee of eight hundred seventy-nine dollars (\$879) and an additional fee of three hundred ninety-six dollars (\$396) for certification in each of the following fields of testing for which accreditation is sought: (1) microbiology of drinking water and wastewater; (2) inorganic chemistry and physical properties of drinking water excluding toxic chemical elements; (3) analysis of toxic chemical elements in drinking water; (4) organic chemistry of drinking water (measurement by gc/ms combination); (5) organic chemistry of drinking water (excluding measurements by gc/ms combination); (6) radiochemistry; (7) shellfish sanitation; (8) aquatic toxicity bioassays; (9) physical properties testing of hazardous waste; (10) inorganic chemistry and toxic chemical elements of hazardous waste; (11) extraction tests of hazardous waste; (12) organic chemistry of hazardous waste (measurement by gc/ms combination); (13) organic chemistry of hazardous waste (excluding measurements by gc/ms combination); (14) bulk asbestos analysis; (15) substances regulated under the California Safe Drinking Water and Toxic Enforcement Act and not included in other listed groups; (16) wastewater inorganic chemistry, nutrients, and demand; (17) toxic chemical elements in wastewater; (18) organic chemistry of wastewater (measurements by gc/ms combination); (19) organic chemistry of wastewater (excluding measurements by gc/ms combination); (20) inorganic chemistry and toxic chemical elements of pesticide residues in food; (21) organic chemistry of pesticide residues in food (measurement by gc/ms combination); (22) organic chemistry of pesticide residues in food (excluding measurement by gc/ms combination); and (23) operation of a mobile laboratory in any one of the above fields of testing in addition to activity in the same field of testing in a certified stationary laboratory under the same owner.

Fees for certification in a specified field of testing may be refunded if the department nullifies the application due to failure by the laboratory to complete the application process in the time and manner prescribed by regulation.

(b) In addition to the payment of certification fees, laboratories located outside the State of California shall reimburse the department for travel and per diem necessary to perform onsite inspections.

(c) If reciprocity with another jurisdiction is established by regulation as described in Section 100830, the regulations may



provide for the waiver of certification fees for program activities considered equivalent.

(d) Fees collected under this section shall be adjusted annually as specified in Section 100425. The adjustment shall be rounded to the nearest whole dollar. It is the intent of the Legislature that the programs operated under this article be fully fee-supported.

(e) State and local government-owned laboratories in California established under Section 101150 or performing work only in a reference capacity as a reference laboratory are exempt from the payment of the fee prescribed under subdivision (a).

(f) In addition to the payment of certification fees, laboratories certified or applying for certification in fields of testing (20), (21), or (22) under subdivision (a) shall pay the department a fee of four hundred dollars (\$400) for the preparation and handling of each proficiency testing sample set.

(g) For the purpose of this section, a reference laboratory is a laboratory owned and operated by a governmental regulatory agency for the principal purpose of analyzing samples referred by other laboratories for confirmatory analysis. Reference laboratories carry out quality assurance functions for other laboratories and may carry out unusual, highly specialized, and difficult analyses not generally available through commercial laboratories, and a limited number of routine analyses, for regulatory purposes only, and without assessing per-sample fees for the services.

(h) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

SEC. 8. Section 100860.1 is added to the Health and Safety Code, to read:

100860.1. (a) At the time of application and annually thereafter, from the date of the issuance of the certificate, a laboratory shall pay an ELAP certification fee. This fee shall consist of a base or administrative fee and a fee for each of the ELAP fields of testing listed below for which the laboratory has requested ELAP certification. These fees shall be nonrefundable and adopted in regulations, and shall be sufficient to allow the ELAP program to be fully fee-supported. The fields of testing for ELAP certification and their code numbers are the following:

- (E101) Microbiology of drinking water.
- (E102) Inorganic chemistry of drinking water.
- (E103) Toxic chemical elements of drinking water.
- (E104) Volatile organic chemistry of drinking water.
- (E105) Semi-volatile organic chemistry of drinking water.
- (E106) Radiochemistry of drinking water.
- (E107) Microbiology of wastewater.
- (E108) Inorganic chemistry of wastewater.
- (E109) Toxic chemical elements of wastewater.



- (E110) Volatile organic chemistry of wastewater.
 - (E111) Semi-volatile organic chemistry of wastewater.
 - (E112) Radiochemistry of wastewater.
 - (E113) Whole effluent toxicity of wastewater.
 - (E114) Inorganic chemistry and toxic chemical elements of hazardous waste.
 - (E115) Extraction test of hazardous waste.
 - (E116) Volatile organic chemistry of hazardous waste.
 - (E117) Semi-volatile organic chemistry of hazardous waste.
 - (E118) Radiochemistry of hazardous waste.
 - (E119) Toxicity bioassay of hazardous waste.
 - (E120) Physical properties of hazardous waste.
 - (E121) Bulk asbestos analysis of hazardous waste.
 - (E122) Microbiology of food.
 - (E123) Inorganic chemistry and toxic chemical elements of pesticide residues in food.
 - (E124) Organic chemistry of pesticide residues in food (measurements by MS techniques).
 - (E125) Organic chemistry of pesticide residues in food (excluding measurements by MS techniques).
 - (E126) Microbiology of recreational water.
 - (E127) Air quality monitoring.
 - (E128) Shellfish sanitation.
- (b) In addition to the payment of ELAP certification fees, laboratories located outside the State of California shall reimburse the department for travel and per diem necessary to perform onsite inspections.
- (c) If reciprocity with another jurisdiction is established by regulation as described in Section 100830, the regulations may provide for the waiver of certification fees for program activities considered equivalent.
- (d) Fees collected under this section shall be adjusted annually as specified in Section 100425. The adjustment shall be rounded to the nearest whole dollar. It is the intent of the Legislature that the programs operated under this article be fully fee-supported.
- (e) State and local government-owned laboratories in California established under Section 101150 or performing work only in a reference capacity as a reference laboratory are exempt from the payment of the fee prescribed under subdivision (a).
- (f) In addition to the payment of certification fees, laboratories certified or applying for certification in fields of testing for pesticide residues in food shall pay a fee directly to the designated proficiency testing provider for the cost of each proficiency testing sample set.
- (g) In addition to the payment of certification fees, laboratories certified or applying for certification shall pay directly to the designated proficiency testing provider the cost of the proficiency testing study.

(h) For the purpose of this section, a reference laboratory is a laboratory owned and operated by a governmental regulatory agency for the principal purpose of analyzing samples referred by other laboratories for confirmatory analysis. Reference laboratories carry out quality assurance functions for other laboratories and may carry out unusual, highly specialized, and difficult analyses not generally available through commercial laboratories, and a limited number of routine analyses, for regulatory purposes only, and without assessing per-sample fees for the services.

(i) This section shall become operative January 1, 2002.

SEC. 9. Section 100862 of the Health and Safety Code is amended to read:

100862. (a) At the time of application for NELAP accreditation and annually thereafter, from the date of the issuance of the accreditation, a laboratory shall pay a base fee and a fee for each of the NELAP fields of testing listed below for which a laboratory has requested NELAP accreditation. The fees shall be nonrefundable and set in regulations, and shall be sufficient to allow the NELAP program to be fully fee supported. The fields of testing for NELAP accreditation and their code numbers are all of the following:

- (N101) Microbiology of drinking water.
- (N102) Inorganic chemistry of drinking water.
- (N103) Toxic chemical elements of drinking water.
- (N104) Volatile organic chemistry of drinking water.
- (N105) Semi-volatile organic chemistry of drinking water.
- (N106) Radiochemistry of drinking water.
- (N107) Microbiology of wastewater.
- (N108) Inorganic chemistry of wastewater.
- (N109) Toxic chemical elements of wastewater.
- (N110) Volatile organic chemistry of wastewater.
- (N111) Semi-volatile organic chemistry of wastewater.
- (N112) Radiochemistry of wastewater.
- (N113) Whole effluent toxicity of wastewater.
- (N114) Inorganic chemistry and toxic chemical elements of hazardous waste.
- (N115) Extraction test of hazardous waste.
- (N116) Volatile organic chemistry of hazardous waste.
- (N117) Semi-volatile organic chemistry of hazardous waste.
- (N118) Radiochemistry of hazardous waste.
- (N119) Toxicity bioassay of hazardous waste.
- (N120) Physical properties of hazardous waste.
- (N121) Bulk asbestos analysis of hazardous waste.

(b) Fees for NELAP accreditation shall be adjusted annually as specified in Section 100425.

(c) In addition to the payment of accreditation fees, laboratories accredited or applying for accreditation shall pay directly to the

designated proficiency testing provider the cost of the proficiency testing studies.

SEC. 10. Section 100870 of the Health and Safety Code is amended to read:

100870. (a) Any laboratory that is certified or holds NELAP accreditation or has applied for certification or NELAP accreditation or for renewal of certification or NELAP accreditation under this article, shall analyze proficiency testing samples. The department shall have the authority to contract with third parties for the provision of proficiency testing samples. The samples shall be tested by the laboratory according to methods specifically approved for this purpose by the United States government or the department, or alternate methods of demonstrated adequacy or equivalence, as determined by the department. Proficiency testing sample sets shall be provided, when available, not less than twice, nor more than four times, a year to each certified laboratory that performs analyses of food for pesticide residues.

(b) The department may provide directly or indirectly proficiency testing samples to a laboratory for the purpose of determining compliance with this article with or without identifying the department.

(1) When the department identifies itself, all of the following shall apply:

(A) The results of the testing shall be submitted to the department on forms provided by the department on or before the date specified by the department, and shall be used in determining the competency of the laboratory.

(B) There shall be no charge to the department for the analysis.

(2) When the department does not identify itself, the department shall pay the price requested by the laboratory for the analyses.

(c) If a certified or NELAP accredited laboratory submits proficiency testing sample results generated by another laboratory as its own, the certification or NELAP accreditation shall be immediately revoked.

(d) Laboratories shall obtain their proficiency testing samples from proficiency testing sample providers that are acceptable to, or are approved by, the federal government or the State Department of Health Services. Laboratories shall bear the cost of any proficiency testing study fee charged for participation. Each laboratory shall authorize the proficiency testing providers to report the study results directly to the accrediting authority and NELAP, as well as to the laboratory.

SEC. 11. Section 100872 of the Health and Safety Code is amended to read:

100872. (a) An ELAP certified laboratory shall successfully analyze proficiency testing samples for those fields of testing for which they are certified, not less than once a year, where applicable.



Proficiency testing procedures shall be approved by the United States government or by the department.

(b) A NELAP accredited laboratory shall participate in, and meet the success rate for, proficiency testing studies as required in the NELAP standards.

(c) The ELAP certified or NELAP accredited laboratory shall discontinue the analyses of samples for the fields of testing or subgroups which have been suspended for failure to comply with the proficiency testing requirements in this section.

